

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

MICHAEL R.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND B.R.,
Appellees.

No. 2 CA-JV 2018-0136
Filed November 29, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD20150837
The Honorable Deborah Pratte, Judge Pro Tempore

AFFIRMED

COUNSEL

Alewelt Law and Consulting PLLC, Phoenix
By Jennifer A. Alewelt
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

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Pima County Office of Children's Counsel, Tucson
By Sybil Clarke
Counsel for Appellee B.R.

MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Brearcliffe concurred.

S T A R I N G, Presiding Judge:

¶1 Michael R. appeals from the juvenile court's order terminating his parental rights to his daughter, B.R., born in October 2013, based on neglect and time-in-care grounds. *See* A.R.S. § 8-533(B)(2), (8)(c). He argues the court erred by proceeding in his absence. We affirm.

¶2 B.R. was removed from her parents' care in 2015. In March 2016, Michael admitted allegations in a dependency petition and the juvenile court found B.R. dependent as to him. In January 2018, the Department of Child Safety (DCS) filed a motion to terminate his parental rights based on neglect and time-in-care grounds, and a contested severance hearing was set to begin June 7, 2018. Michael did not appear at that hearing; his counsel explained he had instead checked into a rehabilitation facility in his home state of Pennsylvania. Although Michael provided a telephone number to the court through counsel, the court was unable to reach him. A DCS case manager testified she had informed Michael of the time and date of the hearing via e-mail and letter. The court concluded Michael was "aware of the trial dates and failed to make himself available even by telephone to participate in the trial." The court proceeded with the hearing and granted the termination motion, finding DCS had proven both grounds alleged and that termination was in B.R.'s best interests.¹ This appeal followed.

¶3 Pursuant to Rule 64(C), Ariz. R. P. Juv. Ct., a juvenile court may proceed with a termination hearing in the parent's absence if the parent has received notice of the location, date, and time of the hearing but

¹The juvenile court also terminated the parental rights of B.R.'s mother, who is not a party to this appeal.

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fails to appear “without good cause.” *See Trisha A. v. Dep’t of Child Safety*, 245 Ariz. 24, ¶ 20 (App. 2018). We review the court’s decision to proceed for an abuse of discretion and will reverse only if the court’s “exercise of that discretion was ‘manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.’” *Adrian E. v. Ariz. Dep’t of Econ. Sec.*, 215 Ariz. 96, ¶ 15 (App. 2007) (quoting *Lashonda M. v. Ariz. Dep’t of Econ. Sec.*, 210 Ariz. 77, ¶ 19 (App. 2005)).

¶4 Michael argues only that he did not receive proper notice of the time of the hearing, although he acknowledges he was aware of the correct date. He asserts without support that his counsel did not correctly advise him of the time due to confusion about the different time zone. First, Michael did not file a post-judgment motion that would have provided an opportunity for him to present evidence supporting this claim. *See Ariz. R. P. Juv. Ct.* 46(E) (permitting motion to set aside judgment); *Ariz. R. Civ. P.* 60(b)(1) (permitting post-judgment relief on basis of “mistake, inadvertence, surprise, or excusable neglect”). We will not consider facts never presented to the juvenile court. *See GM Dev. Corp. v. Cmty. Am. Mortg. Corp.*, 165 Ariz. 1, 4 (App. 1990) (“An appellate court’s review is limited to the record before the trial court.”). Additionally, Michael ignores evidence in the record that he was properly advised of the time of the hearing. In sum, he has not identified any basis for us to conclude the juvenile court erred by proceeding in his absence.

¶5 We affirm the juvenile court’s order terminating Michael’s parental rights.